

Baker&Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Geoffrey A. North
direct dial: 212.589.4642
gnorth@bakerlaw.com

February 27, 2014

Honorable Stuart M. Bernstein, U.S.B.J.
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Picard v. HSBC Bank, et al., Adv. Pro. No. 09-1364(SMB)

Dear Judge Bernstein:

We represent Irving H. Picard, (the “Trustee”), the trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.*, the plaintiff in the HSBC Action. We respectfully submit this letter to respond to Todd Duffy’s letter, submitted to Your Honor yesterday, requesting that the Court extend defendant Ursula Radel-Leszczynski’s time to respond in the HSBC Action to June 17, 2014.

Mr. Duffy’s letter is unfounded and should be disregarded.

In the HSBC Action, in light of pending “common briefing” issues before the District Court, the Trustee has consented to every request for an extension of the deadline by which a defendant—including Mr. Duffy’s clients—must respond to the complaint. The date now being provided to all defendants requesting extensions in the HSBC Action is May 30, 2014. Mr. Duffy’s request for an extension beyond the May 30, 2014 date was under consideration by the Trustee when he made this premature application to the Court. Mr. Duffy’s request for an extension seems to be little more than brinkmanship.

By way of background, in addition to Ms. Radel-Leszczynski, Mr. Duffy represents several other defendants in this case, including Alpha Prime Fund and Senator Fund, two Madoff feeder funds in which Ms. Radel-Leszczynski was a central figure, having established both funds and served as a director of Alpha Prime. On Monday, February

Hon. Stuart M. Bernstein, U.S.B.J.
February 27, 2014
Page 2

24, 2014, Mr. Duffy, on behalf of Alpha Prime and Senator, filed a joint motion for an order compelling the Trustee to participate in mediation, complaining that the HSBC Action has stalled, and insisting on an expeditious resolution of the Trustee's claims. That day he also asked for an extension for Ms. Radel-Leszczynski. His reason for simultaneously insisting upon swiftness for Alpha Prime and Senator and an additional stay for Ms. Radel-Leszczynski is unclear.

Rather than confer with the Trustee's counsel, Mr. Duffy requested that Mr. Hammel, counsel for Ms. Radel-Leszczynski in *Picard v. Kohn*, Adv. Pro. No. 10-5411 (the "Kohn Action"), a separate case involving different claims, contact us to request an extension. Mr. Hammel left a voicemail at about noon on Tuesday, February 25. Mr. Hammel indicated that he was out of the country and asked if the Trustee would agree to coordinate Ms. Radel-Leszczynski's response dates in the HSBC Action and the Kohn Action, which is handled by other Baker Hostetler attorneys, who, coincidentally, were also out of the country on the day Mr. Hammel called, making coordination with them more difficult.

Each action has dozens of defendants and some very different claims—the Kohn action is predominantly a RICO action which is subject to a separate briefing before Judge Rakoff. Tying the dates in the two actions is not without complication, especially if Judge Rakoff renders rulings on different issues at different times. Yet for the current request, the Trustee was trying to work through the issues to provide a response and, frankly, see whether he could accommodate Mr. Hammel's request, understanding that the other defendants in the HSBC Action would then seek the same response date. But before the Trustee could respond, Mr. Duffy filed his letter.

Mr. Duffy has been repeatedly assured that, at least until Judge Rakoff renders decisions in the common briefing relevant to the HSBC Action, all of his clients will be provided an extension through the same date as the other defendants in the HSBC Action. The date the Trustee has recently agreed to for other defendants requesting extensions in the HSBC Action is May 30, 2014.

The Trustee is amenable to extending Ms. Radel-Leszczynski's deadline through May 30, 2014. As she has provided no reason as to why she needs an extension through June 17, 2014, Ms. Radel-Leszczynski's current request should be denied. Not only is it at least several weeks premature, but the Trustee has not had the opportunity to try to work through the scheduling with other defendants.

As such, the Trustee asks that the Court disregard Mr. Duffy's letter—at least until such time as the parties actually have a disagreement about the response date.

Hon. Stuart M. Bernstein, U.S.B.J.
February 27, 2014
Page 3

We appreciate Your Honor's continued attention to this matter.

Respectfully,

Geoffrey A. North

cc: Todd E. Duffy, Esq. (via email)
Jeff G. Hammel, Esq. (via email)
Oren J. Warshavsky, Esq.
Dominic A. Gentile, Esq.